

MICHIGAN SUPREME COURT

PUBLIC HEARING
JANUARY 25, 2006

CHIEF JUSTICE TAYLOR: Good morning. We're here this morning for the public hearing. There are three speakers. Our rules are that each speaker gets three minutes. We will begin with Item #1 designated by us as 2005-28 concerning MCR 9.108 and 9.109. The first speaker is Karen Stephens.

ITEM 1: 2005-28 – MCR 9.108, 9.109 APPOINTMENT OF DEPUTY ADMINISTRATOR

MS. STEPHENS: Good morning Chief Justice and Justices of the Michigan Supreme Court. I'm Karen Stephens. I'm addressing the proposed amendments to MCR 9.108 and 9 regarding the organization chart of the AGC.

First I would like to say, as a former classmate of this Grievance Administrator who was the brightest male if not the brightest student in our class of 183, his appointment by the Michigan Supreme Court validates his capabilities.

The Detroit Free Press, November 16th article *What happens next will be secret* cites these statistics: "There are about 3,500 complaints per year." This averages to about 10 grievances per work day. "About 90% of complaints are eventually dismissed" meaning 3,100 complaints which are swept under the rug. "Complaints are kept secret." Secrecy is the badge of fraud and contrary to the spirit of the First Amendment and our Open Meetings and Freedom of Information Acts; secrecy only benefits the incestuous nature of the courts and shows contempt for We the People, the source of the Court's authority.

The Attorney Grievance web page states: "While the number of Requests for Investigations being filed annually have been on the increase...." Then states the high rate of closure results from the fact that "the lawyer has done nothing wrong." This means that wrong-doing, while escalating, is the norm and over 3,100 people don't have credibility, but the 14 members of the Attorney Grievance Commission do.

Now to relate 3 actual grievances to these statistics: With permission of Judith Sikorski who has been embroiled in multiple lawsuits due to her attorney who converted her check, I heard Mr. Sikorski tell the new judge that Mrs. Sikorski attempted suicide. Her attorney's history includes: embezzlement,

multiple grievances, and at least 10 adverse lawsuits, yet his license was only temporarily suspended concurrently with his other suspensions.

My attorney, who handled a probate case involving 3 issues, threw a quit-claimed house into probate, created unnecessary and incorrect legal documents, collected additional attorney fees greater than \$25,000. A grievance was then filed, and this attorney went back to Probate Court and obtained an order for sanctions for \$1,400. Upon leaving the court, I was informed if I dropped the grievance they would not enter the order. This same attorney was quoted in *Spree* defining “churning” and admitting to its frequency.

Lastly, grievances were filed against my two new attorneys who lied to benefit the opposing party. Then the judge and the attorney paid off mortgages and purchased real estate on the same dates. My attorney converted my check then four months after their withdrawal obtained a retroactive, secret, hidden order to obtain bogus liens for attorney fees over \$260,000. When I am post mortem, the judge and the attorney will be post haste. This grievance was dismissed without requiring responses. I was then advised that the MRPCs are not enforced, and then sent the surly letter which I quote: “I conclude there is no adequate basis to reopen these matters.... I have no doubt that you will continue to assert your fictitious theory of this involvement.” A form letter was then sent directed me to the Supreme Court to prepare an original and ten copies with a filing fee of \$375. I ask this Court to protect the people's constitutional rights. These are token amendments, and will not affect the sanctuary for the lot of attorneys who are frauds and criminals. Thank you.

CHIEF JUSTICE TAYLOR: Thank you Ma'am. Jan Eathorne.

MS. EATHORNE: Good morning. My name is Jan Eathorne. I'm also a member of the public and I also have some concerns about the failure of the Attorney Grievance Commission not to have standards in keeping with national standards. I was very heartened to read the letter that Judge Wallace Kent submitted to your office regarding this amendment and he also opposed it. And he couldn't have said it any better than me. So I'm just going to quote him but I'm also going to provide you with three pieces of documentation to support his concerns.

"The [Michigan] Supreme Court to allow itself to be deprived of the authority to appoint the deputy administrator would be to abrogate its responsibility to supervise the Attorney Grievance Commission. It is equally important for the court to appoint the deputy who would serve in the absence of the appointed administrator as it is to appoint the administrator" themselves.

At the public hearing on June of 2003 we did hear testimony from several legal professionals including attorney Allan Falk who said that not once since 1978 has there been an external audit undertaken to evaluate the Attorney Grievance Commission. And there was only one internal audit and it was found to be damning and very particular. The Michigan Constitution guarantees the right of all individuals to fair and just treatment and yet there, as the other lady said, there is over 3,000 people that are concerned about their treatment before – in front of – by legal professionals, and yet most of these complaints are being dismissed. Also, your own judicial canons says that a judge should be faithful to the law. And a judge should be unswayed by any partisan interest. I'm concerned that this appointment within the Attorney Grievance Commission of their own deputy administrator gives the impression to the citizens that they continue to be a self-serving organization. I have the documentation for you that I'll provide to you – the Court Administrator – clerk. There is also HALT which is a national organization that evaluates Attorney Grievance Commissions rated Michigan 20 out of a 50 with an overall grade of C-. They were particularly concerned because they claimed, and I have the documentation, that the public participation and access to the disciplinary process is an F. That's how they did the grading system from A to F. And so it's not reasonable to adopt an amendment that decreases the citizen access to the commission's administration in view of the fact that most other national organizations are considerably better at providing public participation. The third piece of evidence I bring to your attention is the Michigan Bar Journal's own article *Promoting Public Confidence in the Legal Profession*. And they said that in 2001-2002 there was 168 claims filed and it was almost triple the amount from the previous year and there was 150% increase in the number of attorneys who misappropriated in excess of \$100,000 from their clients. Even they expressed concern because the claimants sometimes are receiving only a fraction of the money they lost as a result of the dishonest conduct of attorneys. The 1999 Conference of Chief Justices says that they want to make full reimbursement of client claims as a goal of each state's fund. Obviously, Michigan is not upholding that standard. I was a victim of embezzlement myself. I also filed a mandamus and also it was rejected although I feel certain that a more objective person would have found my information very valid. I'm concerned that the Michigan Supreme Court in the past has given the appearance to some citizens that they fail to protect the public and I think this amendment should not be adopted because it only increases the chances of the future citizens feeling the same way. Thank you for your time.

CHIEF JUSTICE TAYLOR: Thank you Ma'am.

ITEM 2: 2005-02 – Privacy Policy and Public Records Access

CHIEF JUSTICE TAYLOR: Item 2 described by us as 2005-02, Patrick Clawson.

MR. CLAWSON: Good morning. My name is Patrick Clawson. I'm from Flint, Michigan. I'm a private citizen. I'm quite interested in the current proposal pending before the Court. By occupation I'm an investigative reporter formerly with NBC News in Washington, D.C. and CNN in Washington. I'm also a private investigator. I'm registered as a private investigator in the Commonwealth of Virginia. I'm a certified criminal defense investigator certified by the courts in the District of Columbia. I recently moved here to Michigan and I'm in the process of getting licensed here in Michigan to practice as a private investigator. As an investigator, I'm very concerned about identity theft and I'm concerned about misuse of confidential information. However, a broad and indiscriminate ban on the use of social security numbers contained in Michigan court records would result in some severe unintended consequences for law enforcement and the judicial system. I believe that freedom and public confidence in the judicial system is best served by transparency. I do not believe, by the way, that the public is greatly aware of this proceeding. I'm the only one here testifying apparently about it today. It has received very little limited attention even in the legal press. I think the Court needs to broaden out notice to the public of this proceeding. The public availability of this information is critically important for the administration of justice. The fear of identity theft from the use of information of the court records is really based on privacy hysteria. It is not based on empirical data. There has not been one single published incident of identity theft occurring because someone has gone into a courthouse and extracted confidential information such as a person's social security number or their birth date out of court records. I've conducted extensive searches. There are no published reports. It simply hasn't happened. I urge the Court not to truncate or to bar the disclosure of social security numbers. Keep this information available, perhaps bar it from remotely accessible on-line systems. But keep it available in the court's office – in the clerk's office, so that licensed professionals, law enforcement, other parties that have legitimate use of this information have access to it. Further, the proposed rule does not provide a process for parties to adequately know that confidential information exists in court files and to challenge that determination of confidentiality. The public is not quite protected by the rule as it's currently being promulgated. Let me urge you to think that private investigators are as much involved in law enforcement as any police officer is. We're involved in civil law enforcement. We're also involved in criminal defense. We use court records for many vital purposes including locating witnesses, assisting identity theft victims, collecting and enforcing judgments, fighting fraud, preventing crime, and reuniting children with their parents. And also private investigators are often involved in helping collect child support and enforce child support enforcement orders. Federal law requires this Court, and every other court in America, to

contain social security number information in the court proceedings involving divorce cases and I've cited in my written testimony the actual statutory citations. The information is also of extreme value in criminal defense investigations. Police officers have access to confidential databases such as LIEN here in Michigan. Public defenders, private defense investigators, do not have that access. We have to rely on court records to be able to obtain information to help us locate witnesses, serve subpoenas, enforce judgments, determine the veracity of information that comes before the court. Also, it's not uncommon for people to use multiple social security numbers in court proceedings across the country. And that helps us determine identity fraud and helps us determine if a fraud has been committed against the court. So, in conclusion, if we're prevented from obtaining any information of this type and nature from the court records, I believe that the administration of justice in Michigan will suffer and public confidence in the courts will suffer as well. I'm happy to take any questions. I've been involved in this business for a long time. I could explain to you how this information is used in great detail.

CHIEF JUSTICE TAYLOR: Thank you very much sir, I appreciate it.

JUSTICE WEAVER: Excuse me. So what is your proposal – to do nothing or to – I thought you had some proposal to modify what's being proposed?

MR. CLAWSON: Well, I would suggest, your honor, would be - the best approach would be if a public information system is on-line that could be remotely accessible outside of the confines of the court that a truncated number be available or no number at all - a publicly remote accessible system. However, that information should be available if an individual were to come to the court clerk's office to examine records in person. And there is a real barrier toward access there. I think what the concern is that the court, and what most people are, is that somebody sitting in their house somewhere will do some cruising on the internet, come up with somebody's particular personal identifier information and use that to obtain credit cards or that sort of thing. That's a valid concern. It is also a case, however, where the banking industry is simply not doing what they are suppose to do to protect the public. You know, there's more due diligence then disclosure involved with state officials here to get a driver's license then there is to get a credit card from most banks. I don't see where the courts should be in the business of protecting the banking industry. It would be the Goldwater Institute, which is a think-tank out in Arizona that's been affiliated with The Federalist Society, has said several times that the public interest is not served by banning social security number information from court records. It actually hurts commerce and hurts the administration of justice. The better solution in my opinion would be, one, on any remotely accessible public access system that the social security number be truncated on that public on-line system to the last four digits or bar any social

security number from the publicly accessible system. However, keep that information available to the public and keep that information for law enforcement officials, attorneys, and licensed private investigators who actually come into the court clerk's office to examine the uncensored records that would be available in the clerk's office. Indeed, that approach is being taken in some other jurisdictions around the country. I think it strikes an appropriate balance between protecting privacy interests and also allowing the administration of justice --

CHIEF JUSTICE TAYLOR: What other jurisdiction is doing that?

MR. CLAWSON: Well, for instance, your honor, it's my understanding that now in Maryland -- Maryland is putting up on-line and I was involved in some of the efforts back in Maryland back in 2001, I guess it was when we fought the battle there on court records. Maryland truncates the social security numbers to four digits, but it's my understanding that you can go into the courts in Virginia and examine the actual records and obtain the information there.

CHIEF JUSTICE TAYLOR: So, you're saying Virginia and Maryland, then?

MR. CLAWSON: I'm sorry?

CHIEF JUSTICE TAYLOR: Virginia and Maryland?

MR. CLAWSON: Maryland currently has that in place. There was an extensive study done by the Supreme Court.

CHIEF JUSTICE TAYLOR: I'm not asking --

MR. CLAWSON: Sure. Virginia is currently considering a number of different approaches to it and they have not adopted a single one at this point.

CHIEF JUSTICE TAYLOR: So, in your view we should look to Maryland or Virginia for this information?

MR. CLAWSON: Well, again, Virginia is still in the process of determining how they are going to deal with it. Right now the information is usually --

CHIEF JUSTICE TAYLOR: So, maybe, probably about the stage we're at?

MR. CLAWSON: I'm sorry?

CHIEF JUSTICE TAYLOR: They would be about where we are, then, just trying to determine what to do?

MR. CLAWSON: Yes. In Maryland, - Maryland has already made the decision.

CHIEF JUSTICE TAYLOR: Is there any other place?

MR. CLAWSON: I believe courts in New York have made a determination in this area as well. I can do further research and provide the Court with a list --

CHIEF JUSTICE TAYLOR: Well, I don't want to burden you, but it seems to me that if you have a proposal you'd like to make that might be the way to proceed on this.

MR. CLAWSON: Well, as the Court maybe aware, in Williamsburg, Virginia there is a state court think tank which has reviewed these ideas and these matters in great detail. They've issued a number of reports now over the last five years.

CHIEF JUSTICE TAYLOR: Okay. We can probably check with that.

MR. CLAWSON: I'd be happy to provide the Court with that --

CHIEF JUSTICE TAYLOR: We can check with the national --

JUSTICE WEAVER: Excuse me. Did you give us a letter or something? Have you given us anything in writing?

MR. CLAWSON: Just the written testimony that I supplied on point. I did not learn of this proceeding until last week.

JUSTICE WEAVER: Okay. Now, did you, in that written testimony, did you outline the plan that after I asked you, you outlined a plan, is that in your written testimony?

MR. CLAWSON: I have outlined in my written testimony that I do not think it is advisable to completely cut-off the access --

JUSTICE WEAVER: Did you get the plan, I asked you what you thought needed to --

MR. CLAWSON: I have suggested in the written testimony that perhaps numbers be truncated or excised from any remotely accessible public system —

CHIEF JUSTICE TAYLOR: But the written testimony is what you said to us this morning isn't it?

JUSTICE WEAVER: Yes, that's what I'm trying to --

MR. CLAWSON: I'm sorry?

CHIEF JUSTICE TAYLOR: Your written testimony contains the remarks that you just made to us doesn't it?

MR. CLAWSON: Yes, sir.

CHIEF JUSTICE TAYLOR: Okay. Thank you.

JUSTICE WEAVER: And that's what I wanted to know.

MR. CLAWSON: Yes, sir.

JUSTICE WEAVER: Thank you.

MR. CLAWSON: Again, simply restrict the information from publicly accessible systems for limited —

CHIEF JUSTICE TAYLOR: We understanding.

MR. CLAWSON: but make it available for those of us who need it. It would help administer justice in this state.

JUSTICE MARKMAN: Mr. Clawson, hearings of this sort are a relatively recent innovation. What would you recommend specifically to assist us in apprising the public of the fact that these hearings are taking place? What would you do that we don't do?

MR. CLAWSON: Certainly. Your honor, I learned of this hearing completely by accident last week. Okay.

JUSTICE CORRIGAN: How was that? What was the accident that caused you to learn about it?

MR. CLAWSON: It was an email message that was forwarded to me about a note that had appeared in the Michigan Lawyers Weekly. I had not seen any notice about this in the major metropolitan press. I hadn't seen any legal notices --

JUSTICE YOUNG: I guess we get the same press releases that everybody else gets. The major dailies, locals, don't seem to take much interest in it. We tell them, but they don't publish it.

MR. CLAWSON: Your honor, I understand the frustration. But I would tell you also having been in the news business for many, many years -- frankly, I don't think the Court's public relations staff has done an aggressive enough job of getting the information out to the public. When I went onto the Court's website, I noticed that the only comments that had been filed in this proceeding, only written comments, had been from court administrators, from attorneys, and from judges, people on the inside. There was nothing from anyone in the public. And by seeing the very limited number of written comments that were there --

JUSTICE CORRIGAN: Weren't there thirteen separate written comments that were filed?

MR. CLAWSON: And, again, your honor, --

JUSTICE CORRIGAN: That is really a fair amount for us Mr. Clawson. I know you don't think it's much, but for us to proceed in this fashion that's a fair amount of comment.

MR. CLAWSON: Madam, in the Maryland proceedings I know there were dozens of comments and there were a number of public hearings that were held by the supreme court, not one, there were several, all right. I would suggest that perhaps what the Court might find to be of value would be to perhaps take a step back, hold more notice of these hearings, more notice that the proposal is out.

JUSTICE YOUNG: More notice of what? We do send out notice. The problem, of course, is these are very tedious, technical issues that only segments of the population have an interest in. I mean, this being an area about which as you note there is a great deal of anxiety in the population, you might think more members of the public at large would be interested. But the reality is when we send out our press releases describing what the proposals are, the major papers in the state, both the dailies and the locals, don't really find them newsworthy so they don't publish them. They're on our website, but unless you know -- unless you're a court junkie you don't check our website. So, I'm not sure quite how you propose

that we more aggressively insist that papers cover things that they don't think are newsworthy.

MR. CLAWSON: May I respond, sir?

JUSTICE YOUNG: Of course.

MR. CLAWSON: I spent – I got in the news business in 1969 and have – and continue to be in the news business today as a matter of fact. I must tell you that I believe that the efforts by the courts public relations staff to get this information out is not sufficient. I've spoken with people at the press associations. I've spoken with the President of the Michigan Council of Private Investigators as recently as eleven o'clock last night, completely unaware of any of these proceedings going on. Now, the Court may have sent out to some kind of a mailing list or something last year, some kind of a notice. But I do notice that the Court's public relations staff put out a press release, it's available on the Court's website, about a week or so informing people of these hearings. I don't think that that's adequate notice. What has happened, your honor, in many courts across the country and perhaps this Court has the same problem, is that the court's public relations staff, not just here but all across the country, they tend to talk to people who are in the business. They tend to talk to a very limited number of people. I suggest that the Court's public relations staff has a more – more of a duty to take more of an aggressive approach in letting the public know --

JUSTICE CORRIGAN: We're very interested in having you submit to us in writing your thoughts about who else we should be contacting --

JUSTICE YOUNG: And how?

JUSTICE CORRIGAN: And how we should do that. It's of great value to us because we have struggled with this issue. For example, I'll give one example. Last year, we had a major piece of work on the Child Support Guidelines for Michigan which would have affected 800,000 people. We got 200 comments on that subject. This is a grave difficulty for us this issue of notifying the public of things that – well, will affect their lives. So, if you have ideas that would help us in this – we're all very interested in hearing this.

MR. CLAWSON: Your honor, I'd be delighted to submit to you some suggestions. I would also appreciate getting from the Court a copy of whatever notification list was used to tell people about this particular proceeding. That would help me diagnose some of the problems that you may have in terms of getting information out. I think a lot of it is you're just not getting information out to the right people.

JUSTICE YOUNG: I think you need to talk to our public relations person.

MR. CLAWSON: I'm sorry, sir?

JUSTICE YOUNG: You can contact our media relations person.

MR. CLAWSON: Well, I certainly will. But it is not uncommon – I've been around this system a long time. I used to cover the U.S. Supreme Court. I know how many of these public relations staff tend to work and then tend to talk to others --

JUSTICE CORRIGAN: But you don't have any real direct contact with ours?

MR. CLAWSON: I do not.

JUSTICE CORRIGAN: You're going on the basis of your experience elsewhere?

MR. CLAWSON: I am indeed.

JUSTICE CORRIGAN: Thank you, Mr. Clawson.

MR. CLAWSON: Thank you.

CHIEF JUSTICE TAYLOR: Thank you, Mr. Clawson, I appreciate it. That concludes the hearing. We stand in recess.